

prohibition is sanctioned by the World Trade Organization.

(e) *Duration of certification.* Any nation identified in the biennial report to Congress for having vessels engaged in IUU fishing that is negatively certified will remain negatively certified until the Secretary of Commerce determines that the nation has taken appropriate corrective action to address the IUU fishing activities for which it was identified in the biennial report. Any nation identified in the biennial report to Congress for having vessels engaged in PLMR bycatch or catch of sharks that is negatively certified will remain negatively certified until the Secretary of Commerce determines that the nation has taken the necessary actions pursuant to the Moratorium Protection Act to receive a positive certification.

(f) *Consultations.* NMFS will, working through or in consultation with the Department of State, continue consultations with nations that do not receive a positive certification with respect to the fishing activities described in the biennial report to Congress. The Secretary of Commerce shall take the results of such consultations into consideration when making a subsequent certification determination for each such nation.

[78 FR 3344, Jan. 16, 2013]

**§ 300.206 Denial of port privileges and import restrictions on fish or fish products.**

(a) *Scope of Applicability* (1) Vessels from a nation identified in the biennial report under § 300.202(a), § 300.203(a), or § 300.204(a) and not positively certified by the Secretary of Commerce that enter any place in the United States or the navigable waters of the United States remain subject to inspection and may be prohibited from landing, processing, or transshipping fish and fish products, under applicable law. Services, including the refueling and re-supplying of such fishing vessels, may be prohibited, with the exception of services essential to the safety, health, and welfare of the crew. Fishing vessels will not be denied port access or services in cases of force majeure or distress.

(2) For nations identified in the previous biennial report under § 300.202(a)

that are not positively certified in the current biennial report, the Secretary of Commerce shall so notify and make recommendations to the President, who is authorized to direct the Secretary of Treasury to impose import prohibitions with respect to fish and fish products from those nations. Such a recommendation would address the relevant fishing activities or practices for which such nations were identified in the biennial report. Such import prohibitions, if implemented, would apply to fish and fish products managed under an applicable international fishery agreement. If there is no applicable international fishery agreement, such prohibitions, if implemented, would only apply to fish and fish products caught by vessels engaged in illegal, unreported, or unregulated fishing. For nations identified under § 300.203(a) or § 300.204(a) that are not positively certified, the Secretary of Commerce shall so notify and make recommendations to the President, who is authorized to direct the Secretary of Treasury to impose import prohibitions with respect to fish and fish products from those nations; such prohibitions would only apply to fish and fish products caught by the vessels engaged in the relevant activity for which the nation was identified.

(3) Any action recommended under paragraph (a)(2) shall be consistent with international obligations, including the WTO Agreement.

(b) *Imposition of import restrictions*—(1) *Notification.* Where the Secretary of Commerce cannot make positive certifications for identified nations, and the President determines that certain fish and fish products from such nations are ineligible for entry into the United States and U.S. territories, the Secretary of Commerce, in cooperation with the Secretaries of Treasury, Homeland Security, and State, will file a notice with the Office of the Federal Register.

(2) *Certification of admissibility.* If certain fish or fish products are subject to import prohibitions, NMFS may publish in the FEDERAL REGISTER the requirement that, in addition to any other import documentation requirements that otherwise apply, other fish

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or fish products from the relevant nation, that are not subject to the prohibitions, offered for entry under this section must be accompanied by certification of admissibility, for which a form is available from NMFS. The certification of admissibility must be properly completed and signed by a duly authorized official of the identified nation and validated by a responsible official(s) designated by NMFS. The certification must be signed by the importer of record and submitted to NMFS in a format (electronic facsimile (fax), the Internet, etc.) specified by NMFS.

(3) *Effective date of import restrictions.* Effective upon the date of publication of such finding, shipments of fish or fish products found to be ineligible will be denied entry to the United States. Entry will not be denied for any such shipment that, on the date of publication, was in transit to the United States.

(4) *Removal of negative certifications and import restrictions.* Upon a determination by the Secretary of Commerce that an identified nation that was not certified positively has satisfactorily met the conditions in this subpart and that nation has been positively certified, the provisions of § 300.206 shall no longer apply. The Secretary of Commerce, in cooperation with the Secretaries of Treasury, Homeland Security, and State, will notify such nations and will file with the Office of the Federal Register for publication notification of the removal of the import restrictions effective on the date of publication.

[76 FR 2024, Jan. 12, 2011. Redesignated and amended at 78 FR 3343, 3345, Jan. 16, 2013]

EFFECTIVE DATE NOTE: At 76 FR 2024, Jan. 12, 2011, § 302.205 was added. This section contains information collection and record-keeping requirements in paragraph (b)(2) which will not become effective until approval has been given by the Office of Management and Budget.

### **§ 300.207 Alternative procedures for nations identified as having vessels engaged in IUU fishing activities that are not certified in this subpart.**

(a) These certification procedures may be applied to fish or fish products from a vessel of a harvesting nation

that has been identified under § 300.202 in the event that the Secretary cannot reach a certification determination for that nation by the time of the next biennial report. These procedures shall not apply to fish or fish products from identified nations that have received either a negative or a positive certification under this subpart.

(b) Consistent with paragraph (a) of this section, the Secretary of Commerce may allow entry of fish or fish products on a shipment-by-shipment, shipper-by-shipper, or other basis if the Secretary determines that:

(1) The vessel has not engaged in IUU fishing under an international fishery management agreement to which the U.S. is a party; or

(2) The vessel is not identified by an international fishery management organization as participating in IUU fishing activities.

(c) In addition to any other import documentation requirements that otherwise apply, fish and fish products offered for entry under this section must be accompanied by certification of admissibility, for which a form is available from NMFS. The certification of admissibility must be properly completed and signed by a duly authorized official of the identified nation and must be validated by a responsible official(s) designated by NMFS. The certification must also be signed by the importer of record and submitted to NMFS in a format (electronic facsimile (fax), the Internet, etc.) specified by NMFS.

(d) Any action recommended under this section shall be consistent with international obligations, including the WTO Agreement.

[76 FR 2024, Jan. 12, 2011. Redesignated and amended at 78 FR 3343, 3345, Jan. 16, 2013]

EFFECTIVE DATE NOTE: At 76 FR 2024, Jan. 12, 2011, § 302.206 was added. This section contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

### **§ 300.208 Alternative procedures for nations identified as having vessels engaged in bycatch of PLMRs that are not certified in this subpart.**

(a) These certification procedures may be applied to fish or fish products